

Mail Stop Interference  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Tel: 571-272-4683  
Fax: 571-273-0042

Paper 1  
Filed: 19 August 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**SHLOMO BEN-HAIM, NISSIM DARVISH,  
YUVAL MIKA and MAIER FENSTER**  
Junior Party  
(Patent 6,463,324),

v.

**MORTON M. MOWER**  
Senior Party  
(Application 10/053,750).

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Patent Interference No. 105,768 (SCM)  
(Technology Center 3700)

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**DECLARATION – Bd.R. 203(b)<sup>1</sup>**

- 1       **Part A. Declaration of interference**
- 2       An interference is declared (35 U.S.C. § 135(a)) between the above-
- 3       identified parties. Details of the application(s), patent (if any), reissue

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<sup>1</sup> “Bd.R. x” may be used as shorthand for “37 C.F.R. § 41.x”. 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 application (if any), count(s) and claims designated as corresponding or as not  
2 corresponding to the count(s) appear in Parts E and F of this DECLARATION.

3           **Part B. Judge managing the interference**

4           Administrative Patent Judge Sally C. Medley has been designated to  
5 manage the interference. Bd.R. 104(a).

6           **Part C. Standing order**

7           A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this  
8 DECLARATION. The STANDING ORDER applies to this interference.

9           **Part D. Initial conference call**

10           A telephone conference call to discuss the interference is set for 1:30 p.m.  
11 on 12 Oct. 2010 (the Board will initiate the call).

12           No later than **four business days** prior to the conference call, each party  
13 shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd.R. 120;  
14 Bd.R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

15           A sample schedule for taking action during the motion phase appears as  
16 Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the  
17 schedule prior to the conference call and to agree on dates for taking action. A  
18 typical motion period lasts approximately eight (8) months. Counsel should be  
19 prepared to justify any request for a shorter or longer period.

1                   **Part E. Identification and order of the parties**

2                   Junior Party

3         Named Inventors:     SHLOMO BEN-HAIM, Haifa, Israel  
4                                  NISSIM DARVISH, Haifa, Israel  
5                                  YUVAL MIKA, Haifa, Israel  
6                                  MAIER FENSTER, Petachtikva, Israel

7         Involved Patent:     Patent 6,463,324, issued 08 Oct. 2002, based on  
8                                  Application 09/254,900, filed 12 March 1999  
9                                  and Re-examined per application 90/008312,  
10                                 filed 1 November 2006, certificate issued 29  
11                                 April 2008.

12         Title:                 CARDIAC OUTPUT  
13                                 ENHANCED PACEMAKER

14         Assignee:             MEDINVEST CAPITAL S.A.R.L.  
15

16                   Senior Party

17         Named Inventors:     MORTON M. MOWER, Baltimore, MD

18         Involved Application:     Application 10/053,750, filed 21 Jan. 2002.

19         Title:                 AUGMENTATION OF ELECTRICAL  
20                                 CONDUCTION AND CONTRACTILITY  
21                                 BY BIPHASIC CARDIAC PACING  
22                                 ADMINISTERED VIA THE CARDIAC  
23                                 BLOOD POOL

24         Assignee:             MR3 MEDICAL, LLC  
25

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27         The senior party is assigned exhibit numbers 1001-1999. The junior party  
28         is assigned exhibit numbers 2001-2999. Bd.R. 154(c)(1); SO ¶ 154.2.1. The  
29         senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

1           **Part F. Count and claims of the parties**

2           Count 1

3           Claim 9 of Ben-Haim's Patent 6,463,324

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5           The claims of the parties are:

6           Ben-Haim:        1-41<sup>2</sup>

7           Mower:          12-14, 18-20, 22, 58-66

8           The claims of the parties which correspond to Count 1 are:

9           Ben-Haim:        2-5, 8-10, 12-15, 19, 21, 23, 25, 27-29, 31, 33,  
10                            35, 37-41

11           Mower:          58-66

12           The claims of the parties which do not correspond to Count 1 are:

13           Ben-Haim:        1, 6-7, 11, 16-18, 20, 22, 24, 26, 30, 32, 34, 36

14           Mower:          12-14, 18-20, 22

15

16           The parties are accorded the following benefit for Counts 1-3:

17           Ben-Haim:        International App. PCT/IL97/00236,  
18                            filed 09 July 1997, now WO98/10832,  
19                            published 19 March 1998.

20                            Provisional App. 60/026,392, filed 16 Sep.  
21                            1996.

22           Mower:          App. 09/690,947, filed 18 Oct. 2000, now  
23                            Patent 6,341,235, issued 22 Jan. 2002.

24                            App. 09/008,636, filed 16 Jan. 1998, now  
25                            Patent 6,136,019, issued 24 Oct. 2000.

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<sup>2</sup> As issued in the reexamination certificate.

1 App. 08/699,552, filed 19 Aug. 1996, now  
2 Patent 5,871,506, issued 16 Feb. 1999.  
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5 **Part G. Heading to be used on papers**

6 The following heading must be used on all papers filed in this  
7 interference, see SO ¶ 106.1.1:

8 UNITED STATES PATENT AND TRADEMARK OFFICE

10 BEFORE THE BOARD OF PATENT APPEALS  
11 AND INTERFERENCES

13 SHLOMO BEN-HAIM, NISSIM DARVISH,  
14 YUVAL MIKA and MAIER FENSTER  
15 Junior Party  
16 (Patent 6,463,324),

17 V.

18 MORTON M. MOWER  
19 Senior Party  
20 (Application 10/053,750).

22 Patent Interference No. 105,768 (SCM)  
23 (Technology Center 3700)

1           **Part H. Order form for requesting file copies**

2       When requesting copies of files, use of SO Form 4 will greatly expedite  
3       processing of the request. Please attach a copy of Parts E and F of this  
4       DECLARATION with a hand-drawn circle around the patents and applications  
5       for which a copy of a file wrapper is requested.

6           /Sally C. Medley/  
7           Administrative Patent Judge

8  
9  
10  
11          Enc:

12       Copy of STANDING ORDER  
13       Copy of Patent 6,463,324  
14       Copy of claims of Application 10/053,750  
15       Copy of Patent 6,341,235  
16       Copy of Patent 6,136,019  
17       Copy of Patent 5,871,506

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1 cc (via overnight delivery):

2 Attorney for Ben-Haim:

3 Cozen O'Connor  
4 277 PARK AVENUE  
5 20th FLOOR  
6 NEW YORK, NY 10172

7 William H. Dippert  
8 ECKERT SEAMANS CHERIN & MELLOTT, LLC  
9 U.S. STEEL TOWER  
10 600 GRANT STREET, 44th FLOOR  
11 PITTSBURGH, PA 15219

12

13 Attorney for Mower:

14 The Marbury Law Group, PLLC  
15 11800 SUNRISE VALLEY DRIVE  
16 SUITE 1000  
17 RESTON, VA 20191